Nitro Swiss Data Processing Addendum

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Nitro Global/US Data Processing Addendum

THIS DATA PROCESSING ADDENDUM APPLIES IF YOU HAVE SIGNED UP FOR NITRO SERVICES AS A BUSINESS CUSTOMER UNDER THE <u>NITRO TERMS OF SERVICE</u> AND THE FADP APPLIES TO THE PROCESSING OF PERSONAL DATA IN THE CONTEXT OF THE AGREEMENT. IN CASE YOU SIGNED UP AS AN INDIVIDUAL, PLEASE VISIT NITRO'S <u>PRIVACY POLICY</u> FOR MORE INFORMATION ON HOW NITRO PROCESSES YOUR PERSONAL DATA.

1. SCOPE; ROLES OF THE PARTIES

Nitro will receive and process Personal Data for the benefit and on behalf of the Customer when providing the Services, according to the instructions and purpose defined by the Customer in the Data Processing Details. By means of this Data Processing Addendum, Parties wish to lay down their specific agreements in respect to processing Personal Data within the framework of the Agreement.

By default, Nitro shall act as a Processor and the Customer shall act as a Controller in respect of the Services provided by Nitro to the Customer pursuant to the Nitro Terms of Service. The present Data Processing Addendum supersedes and replaces all previous agreements made (if any) in respect of processing Personal Data and data protection between the Parties related to the Services offered by Nitro.

This Data Processing Addendum supplements and forms part of the Terms of Service, and together the Terms of Service and this Data Processing Addendum constitute a single legal agreement between the Parties. In case of discrepancies or contradictions between this Data Processing Addendum and the Terms of Service, the Data Processing Addendum will prevail.

2. DEFINITIONS

"**Annex**" means any annex to the present Data Processing Addendum;

"**CH Personal Data**" means Personal Data to which the FADP is applicable;

"**CH Restricted Transfer**" means a transfer within the meaning of articles 16(2) and 17 of the FADP of Personal Data by Customer to Nitro (or any onward transfer from Nitro to a Sub-processor), in each case, where such transfer would be prohibited by the FADP in the absence of the protection for the transferred Personal Data provided by the CH Standard Contractual Clauses or any other safeguards or statutory exemptions;

"**CH Standard Contractual Clauses**" means in respect of CH Personal Data, the standard contractual clauses for the transfer of personal data to third countries adopted by the European Commission under Commission Implementing Decision (EU) 2021/914 (including the text from module two of such standard contractual clauses and not any other module and not including any clauses marked as optional in the clauses) adapted for Switzerland in accordance with the FDPIC's statement of August 27, 2021 as recognized by the FDPIC;

"**Controller**" refers to the Customer as identified in the Terms of Service and the applicable Order Form;

"**Data Processing Details**" means Annex 1 to the present Data Processing Addendum which includes more details on the Customer's instructions on the processing of Personal Data such as the purpose, object and nature of processing and the kind of Personal Data being processed;

"**FADP**" means the Swiss Federal Act on Data Protection (as amended);

"**FODP**" means the Swiss Federal Ordinance on Data Protection (as amended);

"**FDPIC**" means Federal Data Protection and Information Commissioner;

"**Personal Data**" means personal data as defined under the FADP that Nitro processes for the benefit and on behalf of the Customer when providing the Services according to the instructions and purpose defined by the Customer in the Data Processing;

"**Processor**" refers to Nitro Software Inc., supplier of the Services to the Customer and as identified in the Terms of Service;

"**Sub-processor**" means any third party processor engaged by Nitro for the processing of Personal Data related to the provisioning of the Services to the Customer;

"**Sub-processor List**" refers to the [list] of Sub-processors as made available online by Nitro that includes the Sub-processors engaged by Nitro for the provisioning of the Services and the fulfillment of Nitro's obligation under the Agreement in general. Nitro may update the Sub-processor List from time to time as per the process set out in this Data Processing Addendum;

All other terms and definitions written with capital letters and which are not defined expressly in this Data Processing Addendum, are defined as set out in the applicable data protection legislation or Nitro's Terms of Service.

3.   OBJECT OF THIS DATA PROCESSING AGREEMENT

3.1.   This Data Processing Addendum determines the conditions of the processing by Nitro of Personal Data communicated by or at the initiative of the Customer in the context of the Addendum. The nature and purpose of the processing, a list and the kind of Personal Data as well as the categories of the Data Subjects are listed in the Data Processing Details (Annex 1).

3.2.   The processing will exclusively take place for the benefit of the Customer and for the purpose as defined by the Customer in the Data Processing Details. Nitro shall immediately inform the

Customer if, in its opinion, an instruction infringes the applicable (data protection) legislation. Nitro will only process the Personal Data according to the documented instructions of the Customer and will not use these Personal Data for its own purpose, unless as explicitly permitted in the Terms of Service. If Nitro is legally obliged to proceed with any processing of Personal Data, Nitro will, unless this would violate applicable mandatory rules, inform the Customer of such obligation.

4. TERM

4.1.   This Data Processing Addendum is applicable to all processing of Personal Data executed in the context of the provisioning of the Services to the Customer by Nitro and applies as long as Nitro processes Personal Data on behalf of the Customer in the context of the Agreement. This Data Processing Addendum supplements the Nitro Terms of Service and is meant to ensure the Parties' compliance with the requirements imposed by the applicable data protection laws and regulations for Customer´s use of the Services.

4.2.   This Data Processing Addendum ends automatically upon termination of the Agreement (or at the moment the processing by Nitro is terminated). The provisions of this Data Processing Addendum that are either expressly or implicitly (given their nature) intended to have effect after termination of the Data Processing Addendum shall survive the end of the Agreement with regard to the Personal Data communicated by or at the initiative of the Customer in the context of the Agreement.

5. TECHNICAL AND ORGANIZATIONAL MEASURES

5.1.   Nitro offers adequate guarantees with regard to the implementation of appropriate technical and organizational measures ("**TOMs**") to ensure secure processing of Personal Data and so the protection of the Data Subject's rights is guaranteed. The technical and organizational measures implemented by Nitro are as set out in the Data Processing Details. The TOMs may be updated by Nitro from time to time, however Nitro will ensure not to downgrade the overall security it has implemented at the moment of the Data Processing Addendum's execution. The Customer acknowledges the TOMs to be adequate for the processing of its Personal Data at the moment of signing or accepting this Data Processing Addendum.

5.2.   Nitro shall take all appropriate technical and organizational measures as referred to in article 8 FADP and article 3 FODP to ensure an adequate level of security appropriate to the risk.

5.3.   If the Customer provides sensitive Personal Data as referred to under the FADP to Nitro in the context of the Agreement, the Customer will notify Nitro thereof in writing via privacy@gonitro.com.

5.4.   In case the Customer is requesting specific technical and organizational measures to be implemented by Nitro (which Nitro has not implemented by default), the Customer will reimburse Nitro for implementing such additional measures according to Section 14 "Costs" of this Data Processing Addendum.

6. RETENTION

6.1. Nitro will not keep Personal Data any longer than required for processing of such Personal Data in the context of the Agreement. The Customer will not instruct Nitro to store any Personal Data longer than necessary. The applicable retention period (as defined by the Customer) is set out in the Data Processing Details.

6.2. At the choice of the Customer, Nitro shall delete or return all Personal Data to the Customer after the end of the provisioning of Services and shall delete existing copies unless Swiss law or any other applicable law requires storage of the Personal Data. The Customer acknowledges the Services might include download functionalities at the disposal of the Customer to enable Customer to download its data. To the extent such functionalities are available, the Customer shall use such functionalities to extract or delete its data.

7. CONFIDENTIALITY

7.1. Parties have agreed on a confidentiality clause in the Terms of Service which applies to the processing of Personal Data in the context of the Agreement.

7.2. Nitro acknowledges and agrees that only those employees, contractors or agents of Nitro who are involved in the processing of Personal Data may be informed about the Personal Data and only to the extent as reasonably necessary for the performance of the Agreement. Nitro ensures that persons authorized to process the Personal Data are committed to confidentiality by contract or are under an appropriate statutory obligation of confidentiality.

8. DATA SUBJECT RIGHTS

8.1. Taking into account the nature of the processing, Nitro shall use all reasonable efforts, by taking appropriate technical and organizational measures, to assist the Customer in the fulfillment of its obligation to respond to requests from Data Subjects.

8.2. For all assistance performed by Nitro in the context of the treatment of such requests from Data Subjects, the Customer will reimburse Nitro in accordance with Section 14 "Costs" of this Data Processing Addendum. Such reimbursement by the Customer shall not apply (i) in case the Data Subject is invoking its rights because of a Personal Data Breach proven attributable to Nitro or (ii) in case such assistance by Nitro does not exceed four (4) hours of work during the term of the Agreement.

9.   DUTY TO NOTIFY

9.1.   Upon becoming aware of a Personal Data Breach, Nitro shall notify the Customer thereof without undue delay by contacting the contact person indicated in the Agreement or the relevant Order Form (or alternatively via the Customer's Notification Email Address or (if applicable) any other e-mail address the Customer has shared in the admin portal as privacy contact). Nitro's contact person for any data protection related matters can be contacted per email: privacy@gonitro.com.

9.2.   At the request of the Customer, Nitro will inform the Customer of any new developments with regard to any Personal Data Breach and of the measures taken to limit its consequences and to prevent the repetition of such Personal Data Breach. It is the responsibility of the Customer to report any Personal Data Breach to the Supervisory Authority or the Data Subject(s), as required.

10.   SUB-PROCESSING

10.1.   Customer expressly authorizes Nitro to engage Sub-processors for the processing of Personal Data for the performance of the Agreement and to facilitate the provisioning of the Services in general. To this extent, the Customer grants a general written authorization to Nitro to decide with which Sub-processor(s) Nitro cooperates for the fulfilment of its obligations under the Agreement. Nitro publishes a Sub-processor List referring to the Sub-processors engaged by Nitro.

10.2.   Nitro will inform the Customer of any intended changes concerning the addition or replacement of Sub-processors by contacting the contact person indicated in the Agreement or the relevant Order Form (or via the Customer's Notification Email Address or (if applicable) any other e-mail address the Customer has shared in the admin portal as privacy contact). The Customer will have the right to object to the addition or replacement by addressing Nitro in writing. Parties will in such case discuss the addition, replacement or alternative in good faith and as soon as reasonably possible after the Customer's written notice of objection.

10.3.   Where Nitro engages a Sub-processor for carrying out specific processing activities, the same or similar data protection obligations as set out in this Data Processing Addendum shall be imposed on that Sub-processor by way of a written agreement, in particular providing sufficient guarantees to implement appropriate technical and organizational measures (and complying with the relevant technical and organizational measures). Where a Sub-processor fails to fulfil its data protection obligations, Nitro shall remain fully liable to the Customer for the performance of such Sub-processor's obligation.

11.   INTERNATIONAL DATA TRANSFERS

11.1.   The Customer acknowledges that Nitro is established in the United States of America, and thereby authorizes international transfers of personal data out of Switzerland for the purposes of providing the Services. Such international data transfer is considered an instruction of the Customer and shall rely on (i) an adequacy decision by the Swiss Federal Council, (ii) the execution of CH

Standard Contractual Clauses as recognized by the FDPIC (as may be amended from time to time), or (iii) any other accepted mechanism for international data transfers as set out in the applicable (data protection) legislation (e.g. a treaty under international law, binding corporate rules, etc.).

11.2.   Where a CH Restricted Transfer is carried out between Customer and Nitro, it is hereby expressly agreed between Customer (as "data exporter") and Nitro (as "data importer") that the CH Standard Contractual Clauses, hereby incorporated by reference, shall apply as from the commencement of the relevant transfer. Annex 1 of the CH Standard Contractual Clauses shall be deemed to be pre-populated with the relevant sections of Annex 1 to the Data Processing Addendum and the processing operations are deemed to be those described in the Data Processing Addendum and Annex 2 of the CH Standard Contractual Clauses shall be deemed to be pre-populated with the section 6 of Annex 1 to the Data Processing Addendum, and:

a. the references in the CH Standard Contractual Clauses to the EU General Data Protection Regulation shall be understood as references to the FADP;

b. in Clause 7 – Docking clause of the CH Standard Contractual Clauses shall not apply;

c. in Clause 9 – Use of sub-processors of the CH Standard Contractual Clauses, "Option 2" shall apply and the "time period" shall be 30 days;

d. in Clause 11(a) – Redress of the CH Standard Contractual Clauses, the optional language shall not apply;

e. in Clause 13(a) – Supervision of the CH Standard Contractual Clauses, the following shall be inserted: The FPDIC shall act as competent supervisory authority;

f. in Clause 17 – Governing law of the CH Standard Contractual Clauses the following shall be inserted: These Clauses shall be governed by the law of Switzerland;

g. in Clause 18 – Choice of forum and jurisdiction, the following shall be inserted: Any dispute arising from these Clauses shall be resolved by the courts of Switzerland;

h. in Clause 18(c) – Data subject jurisdiction, the term "Member State" shall not be interpreted in such a way as to exclude data subjects in Switzerland from the possibility of pursuing their rights at their place of habitual residence (Switzerland) in accordance with Clause 18.c and accordingly, Data Subjects with their place of habitual residence in Switzerland may also bring legal proceedings before the competent courts in Switzerland;

11.3.   The Customer acknowledges that Sub-processors authorized under clause 9 may also process Personal Data in third countries. The Customer permits such transfers, subject to Nitro taking all steps necessary to ensure such transfers comply with the provisions of the FADP and other applicable data protection laws.

12. DATA PROTECTION IMPACT ASSESSMENT AND PRIOR CONSULTATION

12.1.   If the Customer performs a Data Protection Impact Assessment ("DPIA") or prior consultation linked to the processing of Personal Data in the context of the performance of the Agreement (article 22 FADP), Nitro shall reasonably assist the Customer by providing assistance upon the Customer's written request. The Customer will reimburse Nitro for assistance provided according to Section 14 "Costs" of this Data Processing Addendum. Such reimbursement of costs shall not apply in case (i) the assistance requested from Nitro is less than four (4) working hours during the term of the Agreement, or (ii) the DPIA or prior consultation is triggered by a Personal Data Breach proven attributable to Nitro.

13.   AUDIT RIGHT

13.1.   The Customer has the right to perform audits regarding the compliance by Nitro with its obligations under this Data Processing Addendum and the applicable data protection legislation. Nitro shall use its reasonable efforts to cooperate with such audits and to make available all information necessary to prove its compliance with its obligation. The Customer shall notify Nitro of such audit at least one (1) month prior to the date on which the audit will be performed, by given written notice to Nitro via privacy@gonitro.com.

13.2.   In case an audit is being performed, all parties involved shall first sign a specific non-disclosure agreement issued by Nitro with respect to such audit and the audit results before the start of the audit. Upon the performance of any such audit, the confidentiality obligations of the Parties with respect to third parties must be taken into account. Both the Parties and their auditors must keep the information collected in connection with an audit secret and use it exclusively to verify its compliance with this Data Processing Addendum and the applicable laws and regulations in respect of data protection. The Customer has the option to perform the audit itself or to assign an independent auditor, however such independent auditor must duly sign the non-disclosure agreement referred to in this Section.

13.3.   Both Parties and where applicable their representatives, shall reasonably cooperate, upon request, with the Supervisory Authority in the performance of its tasks.

13.4.   The Customer will reimburse Nitro for the assistance provided by Nitro in relation to audit(s) in accordance with Section 14 "Costs" of this Data Processing Addendum. It being understood, such reimbursement shall not apply in case (i) the audit is a result of a Personal Data Breach proven attributable to Nitro or, (ii) in case Nitro's assistance does not exceed four (4) working hours during the term of the Agreement.

14.   COSTS

14.1.   The assistance to be performed under this Data Processing Addendum for which Nitro may charge the Customer, will be charged on the basis of the hours worked and the applicable standard

hourly rates of Nitro (USD 295/hour taxes excluded). Nitro will invoice these amounts on a monthly basis but also has the right to request an upfront retainer fee.

14.2. The payment by the Customer to Nitro for the assistance and professional services provided by Nitro under this Data Processing Addendum will take place in accordance with the provisions in the Terms of Service.

15. LIABILITY

15.1. Subject to the maximum extent permitted under applicable law, the provisions of the Terms of Service concerning limitation of liability also apply to this Data Processing Addendum and the damages arising out of it.

16. MISCELLANEOUS

16.1. The provisions of the Terms of Service concerning changes, entire agreement, severability, applicable law and competent courts are applicable to this Data Processing Addendum. In case of discrepancies or contradictions between this Data Processing Addendum and the CH Standard Contractual Clauses, if applicable, the CH Standard Contractual Clauses will prevail.

Annex 1 – Data Processing Details

A. LIST OF THE PARTIES

1. DATA EXPORTER(S):

Name: Customer, as identified in the Agreement and relevant Order Form.

Address: The address of the data exporter is set out in the Agreement and relevant Order Form.

Contact person's name, position and contact details: The contact details of the contact person for the data exporter are set out in the Agreement and relevant Order Form (and if applicable the Customer's admin portal).

Activities relevant to the data transferred: As set out in the Agreement. The activities that are relevant to the data transferred under these CH Standard Contractual Clauses are described below in Section B "Description of processing/transfer".

Signature and date: By signing or accepting the relevant Order Form, the data exporter will be deemed to have signed this Annex I.

Role (controller/processor): Controller

2. DATA IMPORTER(S):

Name: Nitro Software Inc.

Address: 447 Sutter St, STE 405 #1015, San Francisco, CA 94108, United States.

Contact person's name, position and contact details: privacy@gonitro.com, Nitro Software Inc. 447 Sutter St, STE 405 #1015, San Francisco, CA 94108, United States.

Activities relevant to the data transferred: The activities that are relevant to the data transferred under these CH Standard Contractual Clauses are described below in Section B "Description of processing/transfer".

Signature and date: By signing or accepting the relevant Order Form, the data importer will be deemed to have signed this Annex I.

Role (controller/processor): Processor

B. DESCRIPTION OF PROCESSING/TRANSFER

1. SUBJECT MATTER OF THE PROCESSING OF PERSONAL DATA

The subject matter is determined by the Customer as set out in the Agreement and relevant Order Form.

2. THE NATURE AND PURPOSE OF THE PROCESSING OF PERSONAL DATA

The nature and purpose of processing is determined by the Customer as set out in the Agreement and relevant Order Form.

By default, such processing shall have as purpose to make available the Services including all its features and functionalities to the Customer and its Users and more in general to permit Nitro to fulfil its contractual obligations under the Agreement. Such purpose can be making available the Cloud Services (for example but without limitation making available the customer cloud portal, electronic signing services, analytics services etc.) as well as the provisioning of Support.

The nature of processing shall, among other instructions given by the Customer in the Agreement and relevant Order Form, include the processing, collection, storage, communication and transfer of Personal Data.

3. PERSONAL DATA PROCESSED

Depending on the functionalities used within the Services (e.g. admin portal, electronic signing services, analytics services etc.) and the content of the Customer Data uploaded by the Customer and its Users into the Service, Nitro processes different kinds of Personal Data.

In general, the Personal Data processed by Nitro includes without limitation:

- Identification details (for example User- and usage details)
- Document data (for example Personal Data included in PDF documents processed)

A detailed overview of the kind of Personal Data being processed when using the Services is available via Nitro's Trust Center: https://www.gonitro.com/trust-center/data-protection/processing-of-personal-data

4. SENSITIVE DATA

The data exporter might include sensitive Personal Data in the personal data in accordance with Section 5.3 of this Data Processing Addendum. Sensitive data transferred (if applicable) and applied restrictions or safeguards that fully take into consideration the nature of the data and the risks involved, such as for instance strict purpose limitation, access restrictions (including access only for staff having followed specialized training), keeping a record of access to the data, restrictions for onward transfers or additional security measures: reference is made to the TOMs as listed or referenced in the Data Processing Details below.

5. CATEGORY OF DATA SUBJECTS

The following categories of Data Subjects are by default in scope:

- All Users having access to the Services (which includes admin users, general users or invited users such as signatories).
- All Data Subjects included in the Customer Data uploaded into the Services by the Customer or its Users.

The Customer confirms those Data Subjects will by default be considered one of the following categories:

- Customer's staff
- Customer's customers
- Customer's prospects
- Customer's suppliers

6. SUB-PROCESSORS

Nitro engages Sub-processors for ensuring all functionalities are available within the Services. Which Sub-processors are applicable depends on the Services used and the functionalities and set-up requested by the Customer. A detailed listing of the Sub-processors engaged by Nitro (including the procedure we apply when engaging new Sub-processors) is available via our Trust Center: https://www.gonitro.com/trust-center/data-protection/subprocessors-and-subcontractors

7. TECHNICAL AND ORGANIZATIONAL MEASURES (TOMs)

Nitro implements appropriate technical and organizational measures to ensure adequate security when using the Services. We are continuously updating such measures. A detailed overview of the measures taken is available via our Trust Center on our Security section: https://www.gonitro.com/trust-center/security and in our Information Security Policy. Our Trust Center also lists the certifications Nitro holds in the Compliance section: https://www.gonitro.com/trust-center/compliance.

8. RETENTION PERIOD

Nitro will not store Personal Data any longer than necessary for the provisioning of the Services. Depending on the Services and the functionalities you are using as a Customer, the applicable retention period(s) might differ. Each Customer can request Nitro to configure specific retention periods on their environment (as far as this is technically feasible).

In case no specific retention periods were configured, Personal Data will by default be stored by Nitro until deletion by the Customer or until termination of the Agreement between Nitro and the Customer (plus maximum 30 days), whichever of both situations comes first. A detailed overview of the retention periods is available via our Trust Center: https://www.gonitro.com/trust-center/data-protection/processing-of-personal-data

9. FREQUENCY OF INTERNATIONAL TRANSFERS

On an ongoing basis, as necessary to provide the Services to the Customer.